1944

File No. O. Local Bds / 44

Legal Department—

A **BRANCH**

Subject:— Opinions under the Bombay Local Boards Act, 1923

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File No. O. Local Bds/44

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112-A

CONTENTS.

Legal Department File No. O.Local Boards/44.

Sr.No.	R.I. / O.No.	Subject.	Pages.
	O.Local Bds. 1944.	Opinions under the Bombay Local Boards Act,1923.	
1	697 / 26-1-44.	Non-beckward class. Candidate should be declared elected uncontested to one of the two general or unreserved seats and poll should be taken for the remaining two seats.—	1-
2	1935 / 14-3-44. 2344 / 28-3-44.	Whether properly - vested in the board forms part of Provincial Revenues for purpose of- rule 9(20). of B&O.S. Bs. —	3-15.
3	2394 / 29-3-44.	Whether an adjournment motion, if, brought at the special meeting can be ruled out by the Presiding authority.	17-19.
4	2643 / 6-4-44.	Sec. 33 - Interpretation of —	21-
5	3087 / 25-4-44.	—— do ———	23-
6	3790 / 26-5-44.	Whether street-lands vest in D.C.B.S absolutely or subject to the condition with revert when ceased to to be used for the purpose.-	25-
7	3716 / 24-5-44.	Whether Board can write off balance of the principal without the sanction of Govt.	29-
8	4430 / 23-6-44.	The term 'Candidates' includes male and female — 'Candidate who is a Harijan or a member of a backward tribe' Rule 10(1) of Local Boards Election Rules 1932.	29-
9	4790 / 7-7-44.	Asst. Judge. cannot entitled to set-aside the election held —— whether the order should be considered to be nugatory.	31-
10	5386 / 31-7-44.	Whether the District Local Board is liable to maintin the crossings constructed by the Hydro-Electric Co. on Local boards roads. —	33-
11	6679 / 26-9-44.	Whether it is open to Govt. to pass a conditional order and limit the — statutory liability in view of provisions of Sec.119(2) -	35-1

A/3°17

Sr.No.	R.I. / O.No.	Subject.	Pages.
12	7212 20-10-44.	Obligatory duty of the Local board to make adequate provision for public vaccination etc —	37-
13	330-Confl. 1-11-1944.	Whether the resolution of D.L.B. Kolaba is illegal or likely to cause injury or annoyance to the public within the meaning of Sub-sec.(1) of Sec.125.	39-
14	8392 29-11-44.	Whether under Trust deed of the King Edward VII Technical High School Dhulia dt.30-10-1917 the School belongs to the D.L.B. W.Kh.	41-

SNT/13;7.

Office of the R.L.A.

Reading rule 21 and rule 404(1) of the Bombay Local Boards Election Rules, 1932 together it appears that the proper procedure to follow would be to take a poll, first to declare that backward class candidate who gets the highest number of votes as elected to fill the reserved seat and then to declare the other backward class candidate and the non-backward class candidate as elected to fill the two general seats. The procedure indicated by the Commissioner is not correct. Attention is invited to R.L.A's opinion No.4141, dated the 14th April 1939.

Sd/- P.N.MODS.
26/1/44.

Remembrancer of Legal Affairs.

U.R. to G.D., No.697, dated the 26th January 1944.

SNT/12.7.

Office of the R.L.A.

Statement of Case for Advocate General's opinion.

1. By Government Resolution, General Department, No.4329/33, dated 20th March 1941 Government superseded the District Local Board, Nasik for the reasons given in that Government Resolution for a period of three years with effect from the 20th March 1941 under section 129 of the Bombay Local Boards Act, 1923. By the same Government Resolution Government appointed Khansaheb N.R. Kazi under section 131 to exercise all the powers and duties of the Board during the period of supersession. Section 131(b) of the Act provides that when the Local Board is superseded all property vested in the board shall during the period of supersession vest in the Crown for the purpose of the Province. The question for consideration is whether such property forms part of Provincial revenues for the purpose of rule 9(20) of the Bombay Civil Services Rules so that Khan Saheb N.R. Kazi who is paid out of such revenues cannot be deemed to be in foreign service.

2. Rule 9(20) of the Bombay Civil Services Rules defines "foreign service" as service in which a Government servant receives his substantive pay with the sanction of Government (a) from any source other than the revenues of the Governor General in Council or of a Province or the Railway Fund (when established) or (b) from a company working a state Railway. The expression "revenues of Province" not being defined in the Bombay Civil Services Rules will have to be given the meaning assigned to it under the Government of India Act, 1935. As defined in section 136 of that Act the expression "revenues of the Province" included all the revenues and public moneys raised or received by a Province. The words "vest in the Crown for the purpose of the Province" in section 131(b) of the Bombay Local Boards Act appears to indicate that the property of a superseded District Local Board vested in Government will have to be treated as part of the property liable to be used for the purpose of the Province in which case it would be deemed to be merged in the property of the Provincial Government and no distinction can be legimately drawn between that property and the other property of the Provincial Government . This view appears to be reinforced by the fact that in other similar Act the

provision for vesting of property of a local authority appears to be slightly different. Clause (c) of section 179(3) of the Bombay District Municipal Act, 1901 and clause (c) of section 219(2) of the Bombay Municipal Boroughs Act, 1925. provide that the property shall during the period of supersession vest in His Majesty. Clause (c) of rule 38B(2) of the Defence of India Rules lays down that the property shall during the period of supersession vest in the Provincial Government. In all these provisions the words "for the purpose of the Province" are conspicuously absent. It is therefore possible to argue that the use of the words "for the purpose of the Province" in clause (b) of section 131 of the Bombay Local Boards Act, 1923 may not be without any significance, At any rate applying the cardinal principle of construction that "where the language of an Act is clear and explicit we must give effect to it whatever may be the consequences", it can be legitimately contended that the property vesting in the Crown under clause (b) of section 131 of the Bombay Local Boards Act becomes part of the property vesting in the Provincial Government for the purpose of the Province and consequently Khan Saheb M.R.Kazi can be deemed to be paid out of the Provincial revenues within the meaning of rule 9(20) of the Bombay Civil Services Rules.

3. The above view appears to be based on the strict construction of clause (b) of section 131 of the Bombay Local Boards Act; but that view does not appear to be in accord with the general principles of law relating to the supersession of a local authority. In this connection it appears necessary to examine the consequences arising from "dissolution" and "supersession" of a local authority which are aptly described in the following observations of Subrahmania Ayyar J. in Mahamahopadhaya Rangacharier vs. The Municipal Council of Kumbakonam (I.L.R. 29Mad. 539 at pp. 543-44):- "

Section 4AB(1)(a) empowers the Government to cancel the notification constituting a municipality and to dissolve the municipal council when it sees fit to do so. The consequence in such a case, of course, is a total annihilation of the corporation and under sub-section (2) of the same section the funds till then available for the purposes of the abolished municipality are at the disposal of the Government. The provisions as to supersession which term by the very contrast involved in its use here as distinguished from dissolution implies a radically different thing, are framed naturally on quite other lines. No doubt the Municipal Councillors holding office —

at the time of the supersession cease to do so altogether . But the Municipality itself is left intact, the management of its affairs has to be provided for by the appointment of a person or persons to be chosen by the Governor in Council and though the property held by the Councillor is during the supersession, vested in the Governor in Council, that is so only in trust for the purpose of the Municipality concerned as section 4-B(3)(a)(iii) must be read along with section 27. To put it otherwise, supersession is nothing more than the dismissal of incompetent Councillors followed only by the appointments of, to borrow the language of the English law, a custos for the discharge of the functions of the Council pending the nomination or election of other persons who would resume work in the normal way. In a word supersession is but a suppression of the Council. A clear argument suggested by the section itself against the contrary view is that: The former of the provision just mention does not give the Governor in Council power to transfer the property vested in him during the period of supersession to the reconstituted municipal council. And as the Governor in Council takes the property during the time of the supersession there cannot be implied in him any power to make a transfer that could operate after that period. The result of this view is the loss of property to the Municipality which of course could not have been intended. Nor could the subject of what is of become of property of this description after the expiry of the period of supersession have been overlooked by the draftsman considering that by one of the clauses already referred to in the same section he has provided for disposal of the property in the event of a dissolution. The only reasonable view then is that he took it that the provision that property shall vest in the Governor in Council during the supersession only implied as it undoubtedly does that thereafter it devolves by operation of law on the resuscitated Council as the rightful successor of the superseded Council." The above view is no doubt expressed with reference to an Act of the Madras Province, but the reasoning seems general and would apply to the present case.

A similar view was expressed by the Advocate General in his opinion dated 12th April 1943 wherein he observed as follows:-

"It is true that on the order of supersession being made, the property of the Municipality vests in the Government. But this vesting is only for the purposes of Municipality and the right, title

and interest of the Municipality in the properties belonging to the Municipality can always be proceed against in executing of the decree etc."

Although, therefore the revenues of a Local Board on its supersession vest in Government for the purpose of the Province, they do not strictly speaking from part of the "revenue of the Province." This view finds support from the fact that the governing conditions for the "Local fund" under the Bombay Local Boards Act,1923, appear to be as follows:-

(i) that it is at the disposal of the Local Board which has a perpetual succession;

(ii) that it retains the same status during its supersession when the person or persons appointed by Government under section 131(a) of the Bombay Local Boards Act, 1923, exercise the powers and perform the duties of the Local Board and not of Government; and

(iii) that implicity it remains at the disposal of the reconstituted Board.

The continuity in the status of the "local fund" as belonging to the Local Board appears also from the provisions of clause (b) of section 131 of the Bombay Local Boards Act,1923, as it does not provide specifically for ownership of the fund for the hiatus between supersession and reconstitution of the Board.

4. The property vests in the Provincial Government under clause (b) of section 131 temporarily during the period of supersession after the expiry of which it has to be restored to the reconstituted board, though the property vests in the Provincial Government during the period of supersession, that is only in trust for the purposes of the local board concerned, for even during the period of supersession the Board remains intact and its obligatory duties are to be financed from the local fund. On the whole, I am inclined to the view that the "local fund" vesting in the Provincial Government during the period of the supersession of a Local Board cannot strictly be regarded as falling within the meaning of the expression "revenues of a Province" as defined in section 136 of the Government of India Act, 1935.

5. In any case the separate definition of "local fund" in rule 9(33) of the Bombay Civil Services Rules suggests exclusion thereof from the phrase "revenues of a Province" appearing in the definition of "foreign service" in rule 9(20) of the said rules; and if the point is in some doubt still, the power of interpreting it definitely in this sense seems to rest with Government under rule 3 of the said rules.

6. As however, the question involved is of general importance and is not free from doubt the Advocate General is requested to express his opinion.

Sd/- P.E.Moos.

Remembrancer of Legal Affairs.

U.O. to Advocate General, Bombay, No.1935, dated the 14th March 1944.

SMT/12.7.

No.7 of 1944.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 22nd March 1944.

U. P. to the Advocate General, Bombay, -
No.1935 dated the 14th March 1944.

O P I N I O N.

The question is whether by reason of the provision contained in Section 131(b) of the Bombay Local Boards Act, 1923 that all property vested in the Board shall during the period of supercession vest in the Crown for the purpose of the province, such property forms part of the Provincial Revenue for the purpose of Rule 9(20) of the Bombay Civil Service Rules.

I am of opinion that the words " for the purpose of the province" are used in centra-distinction to the purpose of the Federation or the Central Government. Those words do not in my opinion carry with them the significance that the fund becomes the revenue of the province. Section 172 and 173 of the Government of India Act deal with the vesting of lands and buildings which before the commencement of Part III of that Act were vested in His Majesty for the purposes of the Government of India and they provide that lands and buildings which are situate in a province vest in His Majesty for the purposes of the Government of that province and subject to the provisions of Sections 172 and 173 other property shall vest in His Majesty for the purposes of the Government of the Federation or for certain other purposes. The difference between the words "for the purposes of the province" and the words "for thepurpose of the Government of the Province" may have been deliberately observed. But I am not inclined to attach much weight to this consideration.

I am of opinion that the vesting of such property in the Crown for the purpose of the province does not necessarily make

make such property the revenue of he province. Section 78 of the Government of India Act requires that the Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the province for that year. I do not think the local fund existing under the Bombay Local Boards Act or other property of the Local Board can properly be included in the statement as an estimated receipt of the province or ~~finance~~ expenditure in connection with carrying out the urposes of the Local Board as expenditure of the province ~~xxxxx~~ for that year.

I am of opinion that the words "shall vest in the Crown for the purposes of the province" must on a consideration of the whole of the Act mean vest for the purposes of the Local Board. It will be noticed that the vesting is only during the period of supercession and that all the powers and duties of the Local Board continue notwithstanding the supercession of the Local Board. Section 75 of the Bombay Local Boards Act, 1923 lays down, what shall from part of or be paid into the Local Fund and amongst the items enumerated is the item of all rents and profits accruing from property vested in a Local Board. Section 76 of that Act provides for expenditure of the local fund under the direction of each taluka local board for the purposes of the Act and after dealing with specific items says that the remaining portion of the fund shall be available for expenditure by or under the direction of the District Local Board for the purposes of the Act. Section 50 of the Bombay Local Boards Acts casts certain obligatory duties on local boards to be carried out by them, so far as the local fund at their disposal will allow. The supercession of the local board in no way affects the provisions of the Local Board Act as regards the income of its property or as regards its local fund or as re-

11

regards the purposes for which such property of funds are to be applied. What is superseded is only thelocal board constituted under the provisions of Chapter 2 of the Act. In other words the powers and duties of that body are no longer to be exercised and discharged by that body, but by a person appointed by the Provincial Government in that behalf. This is clear from the fact that if a local board is dissolved, the question of the vesting of the property is deemed to arise. Section 130 provides that when a local board is dissolved it shallbe reconstituted by such nominations and elections as may be necessary, as if the term of office of its members had expired. It was necessary to provide for the vesting of the property of the board in case of its supercession, because no local board as constituted by the Act is to function during theperiod of supercession andas pointed out above, the vesting is only during the period of supercession. This is my opinion is a strong indication of the fact that the vesting is only for the purposes of the Act.

The case in 29 Madras page 539 deals with supercession as distinguished from dissolution under the provisions of the District Municipal Act, Madras, Act IV of 1884. I have'nt got a copy of theAct before me and the relevant sections are not set out in the report of the case. But from the judgment it appears that there were provisions in that Act for cancelling the notification constituting a Municipality andthus dissolving the Municipal Council and there was a provision that in that case the funds till then available for the purposes of the abolished Municipality should be at the absolute disposal of the Government. That case points out the distinction between supercession and dissolution and points out that in the case of supercession the Municipality itself is left intact and only the management of its affairs is transferred from the

the Municipal body to the person or persons appointed by the Governor-in-Council. The observations at page 544 are in my opinion relevant on the question that although the property held by the Board was during the supercession vested in the Governor-in-Council that was so only in trust for the purposes of the Municipality concerned.

No doubt the wording of similar provisions in the Bombay District Municipal Act, 1901 and the Bombay Municipal Boroughs Act, 1925 is different. The words there used are "shall vest in His Majesty." I am however of opinion that this consideration is not such as to outweigh the other considerations mentioned above. It may be that Section 173 of the Government of India Act gets rid of this so called distinction.

I agree with the opinion of the Remembrancer of Legal Affairs that the Local Fund vesting in the Provincial Government during the period of supercession of a Local Board is not the revenue of a province.

I also agree that the definition of local fund in Rule 9(33) of the Bombay Civil Services Rules indicates that local fund is not the revenue of a province and that in any event under Rule 3 Government interpret Rule 9(20) in the manner indicated above (which I think is the correct interpretation) such interpretation will be final.

Sd/ -

Advocate General.

Sd/- P.H.MODI.
22/3.

SNT/12.7.

Office of the R.L.A.

A copy of the statement of the case and the opinion of the Advocate General, Malaya, are forwarded herewith. The Advocate General concurs with the view taken by the Remembrancer of Legal Affairs.

Sd/- P.N.Moss.
28/3/44.

Remembrancer of Legal Affairs.

U.O. to A.D. No. 2344 , dated the 29th March 1944.

SHT/12.7.

Office of the R.L.A.

The District Local Board, Kaira which was composed of 42 elected members and which commenced its normal term of three years from 14-7-1941 was superseded under Rule 38B of the Defence of India Rules with effect from 14-9-1942 for a period of six months in the first instance. The period of supersession was extended from time to time upto 31-3-1944, and Government in exercise of its power under rule 38B (3)(b) of the said Rules has ordered that on the expiry of its period of supersession the District Local Board should be reconstituted in the manner provided for the constitution of District Local Boards under the Bombay Local Boards Act, 1943, with effect from 1-1-1944. It further directed the Collector of Kaira to take steps to hold the necessary elections accordingly.

2. On the strength of these directions general elections of the District Local Board were recently held on 25-2-1944. Of a total of 42 seats, 37 were captured by Congress nominees, 4 by Muslim League nominees and 1 by an Independent. The result has been declared and the names of the elected members have been published in the Bombay Government Gazette. It appears from the Collector's Letter dated 25th March 1944 that under the provisions of section 27 of the Bombay Local Boards Act, he has issued a notice convening a meeting for the election of the President of the newly constituted Board on 1-4-1944. The Collector has reason to suspect t that the newly elected Board, which is composed of an overwhelming majority of Congress members, will frustrate the purpose of the meeting by staging a walk-out or moving an adjournment. As the period of supersession of the Board expires on 31-3-1944 he apprehends a deadlock in the affairs of the Board. He has accordingly instructed the Prant Officer, Kaira, N.D. who is the Chairman of the Committee of Management of the superseded District Local Board to bring to the notice of all concerned that the meeting to be held on 1-4-1944 under section 27 of the Bombay Local Boards Act is a special statutory meeting convened only for the purpose of electing the new President and that no business other than this would be allowed to be transacted at that meeting.

3. On those facts, the questions referred to the R.L.A. for advise are :-

3. On these facts, the questions referred to the R.L.A. for advice are:-

(1) Whether an adjournment motion, if brought, at the special meeting on 1-4-1944 can be ruled out by the Presiding Authority.

(2) Whether the Prant Officer, Kaira, N.D. who is the Chairman of the Committee of Management can initially preside at the meeting of 1-4-1944 under section 27 of the Act.

(3) Whether the quorum of 1/3 of the whole number of members (i.e. 14 members out of 42) prescribed in section 35(2)(c) of the Act is necessary for such a meeting to complete its business.

(4) What should be done to avoid a deadlock in case all members, or such number of them as would create non-quorum, stage a walk-out and do not allow the work of the meeting to be completed?

(5) Who can perform the duties and exercise powers of the District Local Board from 1-4-1944 if the President of the new Board is not elected on thatday?

Question No.1:- So long as the Presiding Authority is in charge of the proceedings at the meeting specially convened for the election of the President, it would be open to him to rule out a motion of adjournment. But as soon as a Chairman is elected at the meeting under the provisions of section 27 of the Bombay Local Boards Act the Presiding Authority becomes functus officio and the power to allow or reject motions would then rest with the Chairman.

Question No.2:- The Collector has already issued a notice convening a meeting for theelection of the President of thenew Board. This action on his part isnot only covered by section 27 of the Local Boards Act but can also be supported by the Government's Order of reconstitution dated 21st August 1943. That Order directs the Collector to take steps to hold the necessary elections. The word "elections" can be interpreted to include not only the first election of members but also the election of the President and Vice President. In view of the supersession of the old Board and the members of the Board consequently vacating of ice, it is not possible for the President of the retiring Board to convene and preside at the meeting under the provisions of section 27. That Act does not specifically provide for a case like the present, but on the whole, looking to the peculiar circumstances of the case, the Collector would, it seems, be the proper person to preside or alternatively the Chief Officer of the Board but not the Prant Officer, Kaira, N.D., who as Chairman of the Committee of Management cannot strictly exercise thepowers of the President of the retiring Board under the

under the previsions of section 27.

Question No.3- The previsions of section 35(2)(c) of the Act are clear on the point. If the condition regarding quorum is not satisfied no business can be validly transacted . (Vide R.L.A's opinion No.7224 dated 16-8-1941).

Question No.4- For the reasons stated by the Collector in his letter and in view of his fear that the newly elected members are likely to bring about a deadlock in Local Board affairs, there would be no legal objection to Government holding that in its opinion the reconstituted Local Board is not competent to perform the duties imposed upon it by or under the Act. The Committee of Management which is already carrying on the administration during the interregnum can continue to do so until a new Committee of Management is appointed. (Vide R.L.A's opinion No.31-Confl. dated 31-1-1944).

Sd/- P.M.M.

Remembrancer of Legal Affairs.

U.B. to G.D., No.2334, dated the 29th March 1944.

A copy of this opinion has been sent to the Collector of Kair direct with reference to his letter No.L.F.395 dated 25th March 1944, a copy of which has been endorsed to the General Department by Mis.

SMT/13.7.

Office of the R.L.A.

The judgment of the Assistant Judge regarding the interpretation of section 33 of the District Local Boards Act, 1923, is not such a piece of conclusive argument as to resolve all the problems in this doubtful matter. Further it does not bind other Assistant Judges or District Judges. There is no question of Government being bound generally by the present decision. Nor do I think there are sufficient grounds in the judgment for Government to forsake the view so consistently held by the R.L.As. and Advocate Generals in the past. It seems advisable to accept Mr.Naik's nomination paper if he again seeks re-election. But for the rest Government's present instructions may stand.

Id/- P.M.M.
6/4/44.

Peshkar & Head Clerk of Legal Affairs.

U.O. to C.D., No.2643, dated the 6th April 1944.

SNT/12.7.

Office of the R.L.A.

In continuation of R.L.A.'s opinion No. 2643, dated the 6th April 1944, attention of the General Department is invited to the recent ruling of the Bombay High Court in Hifsurra hsman Anser Saheb v. Hasan Saheb Abdn Saheb Fulmandi (46 Bom. L.R. p.371) from which it would be clear that the Assistant Judge, Thana, was not entitled to set aside the election even if his interpretation of section 33 of the Bombay Local Boards Act, 1923, was correct. The General Department should bring the said ruling of the High Court, Bombay, to the notice of the Collector of Thana and the District Government Pleader, Thana and Bombay Suburban District.

Sd/-

for Remembrancer of Legal Affairs.

Ex. U.O.R. to G.D., No., 3087, dated the 25th April 1944.

SNT/13.7.

Office of the G.L.A.

The question for R.L.A's consideration is whether according to the provisions of the Bombay Local Boards Act, 1923, street lands vest in District Local Boards absolutely or subject to the condition that they will revert to Government when they cease to be used for the purpose for which they were vested. The answer has been given in Advocate General's opinion No.25 dated the 17th September 1943. That opinion will apply to the corresponding section of the Bombay Local Boards Act, 1923, and a street land on ceasing to be used as a street will not thereby revert to the Provincial Government but will remain the property of the Local Boards.

2. It is true that the fact that a street or road vests in a Local Board, will not of itself give the ownership of the subsoil to the Local Board. A street is legally only the surface and part of the subsoil. It is possible for another party to own the rest of the subsoil. But it is also possible for the Local Board to own the subsoil as well as the street. The ownership of the subsoil is to be determined by the facts of the case in question. If the Local Board has purchased or compulsorily acquired by status the land on which the road is built, then clearly both the road and the subsoil will vest in the Local Board. The road now in question was built in 1915-16 by the Local Board. It is likely enough that the Board purchased or acquired it. It is premature to consider extending the orders in R.D. ,G.R. No.2640 to Local Boards without first determining the ownership of the subsoil in the present case.

P.N.H.
25/5/44.

Remembrancer of Legal Affairs.

U.R. to G.D., No.3790, dated the 26th May 1944.

SRT/13.7.

Office of the R.L.A.

It appears that the District Local Board, Kolaba auctioned the lease of the toll on its Vahal Kharpada road for the year 1934-35, to one Mr. Ismail Abdul Rajak Deqan of Panvel for Rs.960. His two sureties were Mr.Amir Gulam Mohiddin Patel and Mr.M.S.Patel of Panvel. The interest due on the sum amounted to Rs.780-15-0. All attempts to recover the arrears with interest from Mr. Ismail and his first surety Mr.Amir Gulam failed. At last the recovery proceedings were started against the second surety Mr.M.S.Patel by distraint of his motor. In the mean time Mr. M.Patel offered to pay Rs.425 by way of a compromise in full satisfaction of the claim and the District Local Board, Kolaba accepted it. The question referred to the R.L.A., for opinion are :-

(1) whether the Board can write off the balance of the principal without the sanction of Government; and

(2) whether the interest due could be claimed by Govt. -

under section 44(i) of the Bombay Local Boards Act, 1923 the power to compromise in respect of any claim or demand arising out of any contract entered into by it under this Act for such sum of money or other compensation as it shall deem sufficient vests in the board; and this power is subject to the condition that if any sanction in the making of any contract is required by this Act, the like previous sanction should be obtained for compromising any claim or demand arising out of such contract. Under section 47 the board is vested with absolute power to lease the toll on its roads. Consequently the District Local Board, Kolaba was competent to compromise the claim for Rs.425.

It is true that under rule 22 of the Bombay Local Boards Rules framed under section 133 (1) the Commr. may write off any sum up to Rs.500(in each case) which forms part of the Local Fund of a Local Board or to which a local board is lawfully entitled and which has in his opinion become irrecoverable subject to conditions specified in clauses (a) and (b). Apparently this provision applies to irrecoverable sums. In the present case the claim being compromised there remains nothing irrecoverable to which the board is lawfully entitled. Consequently rule 22(i) has no application and the question of writing off does not arise.

Regarding the 2nd point, the liability for interest in this case arises under the contract, and not under section 148 of the Land Revenue Code 1879. Government Resolution General Department No.7779/28, dated 18th March 1935, on which the Collector relies, has therefore no application. The view of the Commissioner, Southern Division that the interest in this case would be credited to the District Local Board is correct. This view does not conflict with any of the R.L.A's opinions referred to in Para.2 of the Commissioner's letter at page.1.

Id/- P.M.M.
23/5/44.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 3716, dated the 24th May 1944.

SNT/13.7.

Office of the R.L.A.

The words "a candidate who is a Harijan or a member of a Backward tribe" in the proviso to rule 10(1) of the Local Boards Elections Rules, 1932, refer to a candidate who is nominated for a seat reserved for the representatives of Harijans, the Backward tribes or women. The term 'candidates' includes male and female . It is clear that in view of Government's intention no amendment of proviso to rule 10(1) is necessary.

Sd/- P.N.MOOS.
22/6/44.

Remembrancer of Legal Affairs.

U.R. to G.O., No.4430, dated the 23rd June 1944.

SET/13.7.

Office of the R.L.A.

The order of the Assistant Juege, Thana in Misc.Application No. 66 of 1943 cannot be considered nugatory when Ramrao Matheba Naik, the successful candidate was a party thereto. The Collecter should hold therefore a fresh election.

Id/- P.N.M.
6/7/44.

Remembrancer of Legal Affairs.

U.R. to G.D., No.4790, dated the 7th July 1944.

SNF/13.7.

Office of the R.L.A.

Owing to letting out of tail water by the Tata Hydro Electric Company, water level of the rivers Ulhas, Paj and Patal Ganga in the Karjat and Panvel Talukas and of the river Kundalika in the Roha and Mangaon Talukas had risen considerably high throughout the year with the result that fords at various places in the said rivers had been blocked up and people had been put to a great inconvenience. In view of this, the Tata Company had constructed many crossings over these rivers in the past, but as since their construction they were maintain neither by the Tata Company nor by Government some of them were washed off while others were left in a delapidated condition. In his letter No.K.L.P./2395 dated 20-11-1942, the President, District Local Board, Kolaba, states that "while constructing these crossings, the District Local Board was never asked whether they would maintain the crossings nor crossings were handed over to the Board any time after constructio It appears that the Tata Hydro-Electric Company agreed to pay a lump sum of Rs.1,00,000/- in settlement of all the obligations under the several clauses of the Hydro-Electric agreements, subject to the execution by Government of a supplementary agreement absolving the Company from its liability against any future claims for damages. It seems that the supplementary agreement has been executed on the Compa paying the promised amount of Rs.1,00,000/-.

2. On the above facts, the question for R.L.A.'s consideration is whether the District Local Board is liable to maintain the crossings constructed by the Hydro-Electric Company on the local board roads.

3. Clause (a) of section 50 of the Bombay Local Boards Act, 1923 enacts that it shall be the duty of local boards, so far as the local fund at their disposal will allow, to make adequate provision for th areas subject to their authority in regard to (i) the construction of roads and other means of communication and (ii) the maintenance and repair of all roads and other means of communication vesting in them. Section 48 provides that every road, building or other work constructed by a local board shall vest in such local board. The wo "constructed" means constructed on its own behalf, and not - ut

another or constructed by any other agency .It is stated that the crossings were constructed by the Tata Hydro-Electric Company and after their construction they were not handed over to the District Local Board. The crossings constructed by the Tata Company or by Government would not automatically vest in the District Local Board. Under section 47 it is competent for a district local board to acquire any property moveable or immoveable. If the intention is to vest such crossings in the District Local Board the property in such crossings should be transferred to the District Local Board with its consent. (Vide R.L.A's opinion No.7480, dated 21-8-1940 and 10121, dated 18-11-1940). Under section 50(a) , the District Local Board would not appear to be liable to maintain and repair the crossings in question unless they are transferred to the District Local Board with its consent.

Id/- P.N.M.
29/7/44.

Remembrancer of Legal Affairs.

U.R. to G.D., No.5386, dated the 31st July 1944.

SNT/13.7.

Office of the R.L.A.

The District Local Board, Satara, proposes to appoint Mr. Y.K. Chaugule as its Engineer with effect from 29-4-1944 on Rs.220/- p.m. in the scale of Rs.170-10-250 E.B. 15-400 E.B. 20-500 sanctioned by Government for new appointments (vide G.R., G.D.No.877/33, dated 24-8-1936) in view of his qualifications and experience and in appreciation of his good services to the Board. Both the Collector of Satara and the Commissioner, Central Division, have recommended the Board's proposal and the General Department has decided to issue orders approving the appointment and sanctioning the payment of Government subsidy towards his pay at the usual rate. Finance Department to whom the papers were referred does not agree to the proposal of the District Local Board to grant 4 advance increments to its Engineer as invites opinion this would be contrary to the principle of timescale pay. That Department however suggests that the District Local Board may be allowed to fix the pay of the Engineer at Rs.220/- but that Government subsidy may be limited to the rate of pay admissible under G.R., G.D. No.877/33, dated 24-8-1936 as was done in the case of the Chief Officer, District Local Board, Belgaum (cf. G.R.,G.D. No.877/33 dated 22-7-1943). The Under Secretary, Finance Department, has however raised a question as to whether it is open to Government to pass such a conditional order and limit the statutory liability in view of the imperative provisions of section 119(2) of the Bombay Local Boards Act, 1923, under which the Provincial Government has to pay two-thirds of the salary of an engineer appointed by the District Local Board and approved by the Government. The R.L.A. is requested to advise in the matter.

2. It is true that under section 119(2) of the Bombay Local Boards Act, 1923, Government is under an obligation to pay two-thirds of the salary of a chief officer or an engineer appointed with its approval. But this obligation is intended solely for the benefit of the Local Board and if the Local Board agrees to waive the benefit there would be no legal objection to the non-observance of the statutory

.revision. It is open to a person to contract himself out of statue. (See Craies on Statue Law pp.74-75). The maxim which sanctions the non-observance of a statutory provision is that "cuilibet licet renuntiare juri pro se introducto." Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. (See Maxwell on Interpretation of Statutes, p.334). It is clear that in the present case no public right or public policy would be infringed if the Local Board, Satara, agrees to waive its right to get from Government two-thirds of the advance increments of salary which it proposes to give to its Engineer. Once the right is waived the Local Board cannot have any legal claim to revive it. It would therefore be competent for Government, before according its approval to the appointment, to insist that the Local Board, Satara, should agree to limit Government's liability to two-thirds of the initial pay of the Engineer in the scale laid down in G.R.(G.D.) No.877/33, dated 24-8-1936.

Id/- P.N.M.
23/9.

Remembrancer of Legal Affairs.

U.R. to G.D., No.6679, dated the 26th September 1944.

SNT/13.7.

Office of the R.L.A.

Both the Local Board and the Panchayat have concurrent jurisdiction over the local area for which the Panchayat has been constituted under the Bombay Village Panchayats Act,1933. Consequently both the Bombay Local Boards Act, 1923, and the Bombay Village Panchayats Act, 1933, have to be so construed and harmonised as to avoid any conflict between the two bodies. Under clause (e) of section 50 of the Bombay Local Boards Act it is an obligatory duty of the local boards to make adequate provision for "public vaccination and sanitary works and measures necessary for the public health", while under clause (e) of section 26(1) of the Bombay Village Panchayats Act "the preservation and improvement of public health" is an obligatory duty of the panchayat. Reading these provisions together it is manifest that the intention of the legislature is that "vaccination" should remain an obligatory duty of the local board in the local area for which a panchayat is so constituted. Consequently the view taken by the Collector of Belgaum is correct and it would not be competent for the District Local Board, Belgaum, to charge the Panchayats in the District for veccination.

Sd/- P.N.H.
18/10/44.

Remembrancer of Legal Affairs.

U.R. to G.D. No.7212, dated the 20th October 1944.

SNT/13.7.

Office of the R.L.A.

Both the Local Board and the Panchayat have concurrent jurisdiction over the local area for which the Panchayat has been constituted under the Bombay Village Panchayats Act,1933. Consequently both the Bombay Local Boards Act, 1923, and the Bombay Village Panchayats Act, 1933, have to be so construed and harmonised as to avoid any conflict between the two bodies. Under clause (e) of section 50 of the Bombay Local Boards Act it is an obligatory duty of the local boards to make adequate provision for "public vaccination and sanitary works and measures necessary for the public health", while under clause (e) of section 26(1) of the Bombay Village Panchayats Act "the preservation and improvement of public health" is an obligatory duty of the panchayat. Reading these provisions together it is manifest that the intention of the legislature is that "vaccination" should remain an obligatory duty of the local board in the local area for which a panchayat is so constituted. Consequently the view taken by the Collector of Belgaum is correct and it would not be competent for the District Local Board, Belgaum, to charge the Panchayats in the District for vaccination.

Sd/- P.N.H.
16/10/44.

Remembrancer of Legal Affairs.

U.R. to G.D. No.7212, dated the 20th October 1944.

SNI/13.7.

Office of the R.L.A.

The view taken by A(E) is correct.

2. To bring the resolution of the District Local Board, Kolaba, to lease its building at Alibag for a perid of seven years within the ambit of section 125(1) of the Bombay Local Boards Act, 1923, it would be necessary to prove that in the opinion of the Collector the lease would be causing or likely to cause injury or annoyance to the public. 'injury' in its legal sense means damage resulting from a violation of a legal right. It is this violation of a legal right which renders the act wrongful in the eye of the law and makes it actionable (see Iyer's Law Lexicon, p.593). "Annoyance" in law includes any hurt done to a place public or private by placing anything therein that may breed any ~~[illegible]~~ infection or by enfreachment of such like means. It means much the same thing as nuisance (ibid p.70). Power to lease immoveable property for a term not exceeding seven year vests in the Board under the previse to section 47 and the fact that such lease would bind the next board in as much as much as it was for a period longer than the term of the board sanctioning the lease would be no valid ground to hold that it would cause injury or annoyance to the public within the meaning of section 125(1). The lease by the District Local Board, Kolaba, of its building at Alibag involves no violation of the rights of the public, nor does it cause any annoyance to the public. Consequently the resolution of the District Local Board, Kolaba, does not come within the mischief of section 125(1). The discretion vested in the Collector under that ~~[illegible]~~ provision being improperly exercised, a suit by the District Local Board, Kolaba to set aside the Collector's order is likely to succeed.

Sd/- P.N.K.
28/10/44.

Remembrancer of Legal Affairs.

U.R. to G.D., No.330-Confl. dated the 1st November 1944.

SNT/13.7.

Office of the R.L.A.

The question referred to the R.L.A. for consideration is whether under the Trust Deed of the King Edward VII Technical High School, Dhulia, dated the 30th October 1917, the school belongs to the District Local Board, West Khandesh.

2. The Trust Deed of the King Edward VII Technical High School, Dhulia, dated the 30th October 1917 provided: "It is hereby declared and agreed between the parties hereto that the Secretary of State shall hold and stand possessed of the piece of land described in the Schedule hereto and all buildings which now are erected or may for the time being be erected thereon and also all fittings and fixtures which now are or may for the time being be erected thereon and also all fittings and fixture which now are or may for the time being by on the premises upon the trusts and to and for the intents and purposes following that is to say upon trust to permit the local Board to enter upon the said premises for the purposes and on the conditions specified in clauses (1) to (5): Provided always and it is hereby declared and agreed that in the event of default being made by the Local Board or its successor in performance of any of the conditions hereinbefore mentioned the said building grant and any future building grant from time to time made by Government in respect of the said school or so much of the same as shall not have been made shall lapse and it shall be lawful for the Secretary of State at any time thereafter to enter upon and take possession of the said premises and all buildings fittings and fixtures for the time being on the said premises and the same shall be and become absolutely the property of the Secretary of State free from incumbrances and discharged from the trusts thereof etc." It is clear from the Trust Deed that the school vests in Government on trust but has been put at the disposal of the District Local Board, Dhulia, for management, whereby no title to the ownership of the school has been created in favour of the District Local Board, Dhulia (cf. section 50A of the Local Boards Act, 1923). Consequently it is not correct to say that under the Trust Deed the school belongs to the District Local Board Dhulia. If the District Local Board, Dhulia, is unwilling to manage the school on the conditions specified in the Trust Deed Government may take

rust Deed Government may take over the schools.

Sd/- R.S.H.

for Remembrancer of Legal Affairs.

U.R. to E.D., No.8392, dated the 29th November 1944.

SMT/13.7.